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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,068	03/26/2004	Kurt W.F. Rumens	243148013US1	8076

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PERKINS COIE LLP

PATENT-SEA

P.O. BOX 1247

SEATTLE, WA 98111-1247

EXAMINER

BASICHAS, ALFRED

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,068

Applicant(s)

RUMENS, KURT W.F.

Examiner

Alfred Basichas

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6-9, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hempel (5,887,388), which shows all of the claimed limitations. Hempel shows, among other things, a fireplace installation assembly, comprising a furniture unit 16,18,20 comprising a decorative front facing portion having an upper portion 12 and a lower portion 14, the upper portion having an enlarged receptacle therein, and the lower portion adapted to engage a support surface (see at least figs. 1,10f,10g); and a direct vent heat-generating fireplace unit (see at least col. 1, lines 26-30) positioned in the enlarged receptacle in the upper portion of the furniture unit, the fireplace unit having a firebox configured to contain a fire, and having a viewing portion that provides visibility of the fire in the firebox from exterior of the fireplace unit (while not specifically recited it is inherent that a gas fireplace includes a firebox and viewing portion), wherein the furniture unit includes a substantially horizontal support portion connected to the front facing portion adjacent to the receptacle (see at least figs. 10f,10g,13a), the fireplace

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unit being supported on the support portion, wherein the furniture unit is a tall self-supporting unit positionable on the ground in a standing configuration (see at least figs. 10d), wherein the lower portion of the furniture unit is a display area (as on the lower shelves and would be inherent that books or other knickknacks may be placed on the shelves of a wall unit for display), wherein the furniture unit is one of a book case, an entertainment center, an armoire, a cabinet, a hutch, a dresser, and a storage area, wherein the furniture unit is a corner-mounted unit shaped and sized to fit into a corner of a room, and wherein the upper front face portion is integrally connected to the lower cabinet portion. In addition, it should be noted that Hempel is capable in performing the newly claimed functional recitation. Specifically, the assembly recited in Hempel is capable of self support and being movable as a unit.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hempel (5,887,388), which discloses substantially all of the claimed limitations. Hempel does not specifically recite an electric fireplace or a simulated fire. Official Notice is given that an electric fireplace and a simulated fire is old and well known in the art. Such an arrangement has the clear and obvious benefit of providing for warmth and/or esthetic appeal where a gas or wood burning fireplace is not practical. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate an electric fireplace or a simulated fire into the invention disclosed by Hempel, so as to provide for warmth and/or esthetic appeal where a gas or wood-burning fireplace is not practical.
6. Claims 10, 11, 14, 16, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hempel (5,887,388) in view of Fleming (5,816,237). Hempel discloses a fireplace including substantially all of the claimed limitations, but does not specifically recite the claimed limitations directed to the surround/heat shield or a heat exchanger. Fleming teaches a fireplace including surround/heat shield 11, so as to shield the housing from heat produced in the combustion chamber, and a heat exchanger 6,15,17,10, so as to provide increased efficiency in heating the air in the room. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the fireplace of Fleming into the invention disclosed by Hempel, so as to enhance the safety and efficiency of the apparatus.

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7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hempel (5,887,388) in view of Fleming (5,816,237), and further in view of Campbell (6,216,687).

The combination of Hempel in view of Fleming teaches substantially all of the claimed limitations, including a heat exchanger, but does not specifically recite a blower.

Campbell teaches a fireplace with heat exchanger including a blower 72 for creating a draft, thereby increasing the flow of air through the heat exchanger (see at least col. 5, lines 41-53). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the blower of Campbell into the invention taught by the combination of Hempel in view of Fleming, so as to enhance the performance of the heat exchanger.

8. Claims 12, 13, 15, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hempel (5,887,388) in view of Fleming (5,816,237). The combination of Hempel in view of Fleming teaches substantially all of the claimed limitations, but does not specifically recite the design of the heat shield to be dome shaped or decorative. The claimed shape and design of the of the heat shield is an obvious modification based on design choice, and depends on spatial and esthetic considerations. In view of the absence of criticality for this particular design, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate it into the invention taught by Hempel in view of Fleming, so as to provide for spatial considerations.

Response to Arguments

9. Applicants' arguments with regard to the rejected claims, filed May 22, 2006, have been considered, but are not deemed fully persuasive.

a. Applicant asserts that Hempel is not capable of self support or being moved as a unit. The examiner disagrees. Applicant is reminded that claim language is given its broadest reasonable interpretation and as such the claims are anticipated and/or made obvious as discussed above.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272

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4871. The examiner can normally be reached on Monday through Friday during regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone numbers for the organization where this application or proceeding is assigned are 571 273 8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

July 7, 2006



Alfred Basichas
Primary Examiner